

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROBERT MORIN,

Plaintiff and Respondent,

v.

BERT ROSENTHAL et al.,

Defendants and Appellants.

B166408

(Los Angeles County
Super. Ct. No. SC071316)

ORDER MODIFYING OPINION AND
DENYING PETITION FOR REHEARING
[no change in the judgment]

The opinion filed September 21, 2004 is modified as follows:

1. On page 1, by inserting at the end of the second paragraph, after the word Appellants and before the period:

Gregory Pyfrom, Gwen Pyfrom, and Blatz, Pyfrom & Associates

2. On page 1, by adding as a new third paragraph:

Burg & Brock and Arnold W. Gross for Defendants and Appellants Bert Rosenthal, Jocelyn Rosenthal, and BPR Consulting Services.

3. On page 9, by inserting the following new paragraphs after the first paragraph:

Defendants express concern filing the SLAPP motion in the current district and then holding it in abeyance until the motion to transfer districts is resolved could lead to the SLAPP motion being denied for failing to bring it to a hearing within 30 days after service on the plaintiff as required by section 425.16, subdivision (f). We believe defendants' concern is unwarranted.

Under the accommodation we have adopted to deal with remands from a federal court the defendant has 60 days to refile the SLAPP motion after notice of remand. If the defendant acts diligently 60 days normally should be enough time to resolve the motion to transfer districts and still file a timely SLAPP motion. If it is not, the defendant can ask for an extension of time to file the SLAPP motion under section 425.16, subdivision (f) or the defendant can file the motion in the current district and there would still be another 30 days after the motion is filed to resolve the transfer issue before the SLAPP motion has to be heard. If 90 days, or such additional time as the court may have granted, is *still* not enough time to resolve the transfer issue and have the SLAPP motion heard the defendant can reschedule the hearing under section 425.16, subdivision (f) on the ground "the docket conditions of the court require a later hearing"—the "docket condition" being the pendency of a decision on the transfer motion.

This modification does not constitute a change in the judgment.

The appellants' petition for rehearing is denied.